UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SUBREGION 37

OAKTREE CAPITAL MANAGEMENT, LLC, and TBR PROPERTY, LLC, a SINGLE EMPLOYER, d/b/a TURTLE BAY RESORTS, and BENCHMARK HOSPITALITY, INC.

EMPLOYER, d/b/a TURTLE BAY RESORTS,		
and BENCHMARK HOSPITALITY, INC.	Cases	37-CA-6601-1
		37-CA-6642-1
		37-CA-6669-1
and		37-CA-6691-1
		37-CA-6730-1
		37-CA-6753-1
		37-CA-6756-1
UNITE HERE! LOCAL 5		37-CA-6768-1
		37-CA-6816-1
		37-CA-6826-1
		37-CA-6827-1
		37-CA-6835-1
		37-CA-6840-1
		37-CA-6875-1
		37-CA-6877-1
		37-CA-6878-1

REPLY TO RESPONDENTS' OPPOSITION TO MOTION TO STRIKE RESPONDENTS'
AMENDED BRIEF IN SUPPORT OF EXCEPTIONS TO ALJ DECISION AND REQUEST
FOR SANCTIONS OR OTHER APPROPRIATE REMEDY

As set forth in Counsel for General Counsel's Motion to Strike Respondents' Amended Brief filed on April 12, 2007 ("Motion to Strike"), Respondents were permitted a generous 175 pages for their Brief in Support of Exceptions. When Respondents filed a brief that far exceeded the 175 pages of permitted argument, the Board allowed Respondents a second opportunity to comport with the Board's rules, which the Board clearly identified in its Order. As argued in the Motion to Strike, Respondents have once again far exceeded the 175 pages of argument permitted by the Board. Respondents have filed an Opposition to the Motion to Strike. Rather

than respond to all of the baseless and preposterous assertions in Respondents' Opposition,

Counsel for the General Counsel focuses herein on those most pertinent to the Motion to Strike.

In defense of their extensive use of footnotes written in a font size smaller than that permitted by Section 102.114(d) of the Board's Rules and Regulations, Respondents argue in their Opposition that it is "common practice" for footnotes "to be in a smaller type size than the text of a brief or other document." (Opposition at 6). Respondents also argue that "[n]owhere in Section 114(d) of the Board's Rules & Regulations does it expressly forbid footnotes to be in a smaller type size than the text of the brief." (Id.) However, this ignores the point. Section 102.114(d) clearly states that "[p]apers filed with the Board . . . shall be in a typeface no smaller than 12 characters-per-inch (elite or the equivalent). . . ." Section 102.114(d) does not "forbid footnotes to be in a smaller type size" because it expressly requires papers filed with the Board to "be in a typeface no smaller than 12 characters-per-inch" Although Section 102.114(d) makes an exception for the spacing of footnotes, it makes no such exception for the typeface of footnotes, which thus must be written in 12 point typeface. Through their extensive use of footnotes in 10 point font, Respondents have far exceeded the 175 pages of argument permitted by the Board in this case.

Regarding Respondents inclusion of text from their Initial Brief as block quotations in their Amended Brief, Respondents admit that they "rephrased" the ALJ's decision and included quotations containing what they consider to be "minor variations" of the Administrative Law Judge's decision. (Respondents' Motion at 7 and 9). Respondents then go through the purported block quotations from the ALJ's decision sentence by sentence and determine whether to include the text as double spaced or single spaced in their Exhibit "A," which they refer to as a "space modified amended brief." In doing so, Respondents essentially admit that they cobbled together

concepts and quotations from different parts of the ALJ's decision and attempted to pass them off as a block quotation from the same. (See, e.g., Respondents' Motion at 8-9). Respondents also make it apparent that some of these block quotations were composed entirely of text from their Initial Brief and contained no direct quotations from the ALJ's decision at all. (See, e.g., Respondents' Motion at 9-11). In Respondents' self-serving estimation, these misleading block quotes amounted to about half a page of additional text.

Respondents offer no explanation as to why the argument contained at the beginning of their exceptions document should not be counted toward the 175 page limit. Rather, Respondents argue generally that even if that part of their exceptions document is considered to be argument and counted toward the page limit, Respondents' amended brief would still total less than 175 pages.

In the end, despite being provided with a second opportunity to comply with the Board's Rules and Regulations, Respondents have filed a brief that far exceeds the 175 page limit permitted by the Board. In particular, Respondents' brief contains extensive footnotes written in text smaller than 12 point font, Respondents' exceptions commence with more than one page of argument, and Respondents have included in their Amended Brief block quotations composed of text from their Initial Brief. Respondents have made a mockery of the Board's processes by flagrantly violating the Board's order regarding the page limit for Respondents' Exceptions brief.

WHEREFORE, in consideration of the above and in consideration of the facts and arguments set forth in the Motion to Strike, Counsel for General Counsel respectfully requests that the Board grant the instant motion to strike Respondents' Amended Brief in Support of Exceptions to ALJ Decision in its entirety.

Dated at Honolulu, Hawaii, this 24th day of April 2007.

Respectfully submitted,

Meredith A. Burns

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Reply to Respondents' Opposition to Motion to Strike Respondents' Amended Brief in Support of Exceptions to ALJ Decision and Request for Sanctions or Other Appropriate Remedy, has this day been served as described below upon the following persons at their last-known address:

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DATED at Honolulu, Hawaii, this 24th day of April 2007.

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